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Letter dated 23 January 2002 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to transmit to you herewith in an annex the request that the Government of the Democratic Republic of the Congo is addressing to the Security Council in order to facilitate the provision of humanitarian assistance to the disaster-stricken population of Goma and the surrounding area.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(*Signed*) Atoki **Ileka**
Ambassador
Permanent Representative

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Request addressed by the Democratic Republic of the Congo to the Security Council in order to facilitate the provision of humanitarian assistance to the disaster-stricken population of Goma and the surrounding area

Kinshasa, 22 January 2002

I. Status of the situation

1. *The facts*

On 16 January 2002, the Congolese town of Goma, the administrative centre of Nord-Kivu province, territory that is currently occupied by armed Rwandese troops supported by their allied rebel movement RCD/Goma, was struck by a devastating eruption of the Nyiragongo volcano.

The town of Goma, which was cut in two by the lava flow, has been practically destroyed together with all its infrastructures. More than half of the overall population estimated at 600,000 persons was forced, by the advancing lava, to seek refuge in neighbouring Rwanda under very precarious and unsafe conditions.

The other part of the population is either isolated in Goma or has withdrawn to the Goma-Saké and Goma-Rutshuru roads.

It should be noted that the borders remained closed, in accordance with a decision taken by Rwanda and RCD/Goma, for several hours at the beginning of the disaster, which dangerously exposed the population that was in flight and in search of shelter.

During this time, as a result of the ill treatment that they were subjected to in Rwanda (Rwandese officials, according to the victims, made them pay for everything, even for glasses of water and access to latrines), all the inhabitants concentrated in two camps near Gisenyi, one of which provided shelter to former Hutu soldiers and militia members, decided to leave Gisenyi and returned en masse to their town of Goma, even though it had been destroyed and was still in danger.

2. *Humanitarian consequences*

The humanitarian situation in Goma is most alarming.

The population of Goma and its surrounding area, living out in the cold without food, drinking water, electricity and medicine and exposed to all risks with regard to their safety and epidemic diseases, expects the Government to provide it with substantial assistance.

Taking advantage of the population movement towards Gisenyi, armed RCD/Goma groups systematically plundered the town of Goma, even destroying the logistics base and much of the equipment of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).

There is no drinking water to be found because Lake Kivu has been filled with sulphur (which kills even the fish), and the sewers have been blocked by the lava.

Gas fumes are creating serious breathing problems; and earthquakes are still frequent in areas of more than 100 kilometres. Epidemics are threatening the population, and the number of deaths is increasing every day. There are more than 300,000 displaced persons. Several children who were separated from their families wander about without any assistance.

3. *Urgent measures taken by the Government*

Following the extraordinary meeting of the Council of Ministers held on Saturday, 19 January 2002, the Government of the Democratic Republic of the Congo, acting in accordance with its duty to protect its population, took the following urgent measures:

- The town of Goma and its surrounding area were declared a "disaster area";
- A national crisis committee was set up in order to meet the most urgent needs of the population in partnership with the international community and humanitarian agencies;
- A governmental mission was sent immediately to the disaster area and the various reception sites, inter alia, in order to determine the exact situation and rapidly organize conditions for the return and resettlement of the displaced persons in our country;
- The sum of 450 million Congolese francs, or the equivalent of US$ 1.5 million, was provided for emergency operations;
- A special national solidarity fund was established to enable Congolese, wherever they are situated, to participate on a voluntary basis in providing moral and material support to the population of Goma and its surrounding area.

II. The primary authority of the Government of the Democratic Republic of the Congo to provide humanitarian assistance to its population

General Assembly resolution 43/131 of 8 December 1988 on humanitarian assistance to victims of natural disasters and similar emergency situations recognizes the primary role of the Government of the State where the natural disasters and emergency situations occur.

Accordingly, paragraph 2 of the resolution reaffirms "the sovereignty of affected States and their primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories".

In accordance with general international and humanitarian law, all Governments have the obligation to provide help to and to assist and protect their populations and to report in that regard to the international community. This is also the case with regard to the Government of the Democratic Republic of the Congo, recognized by all States and international organizations as the sole legal authority representing and binding the Congolese State.

The action by Rwanda and RCD preventing the governmental mission of the Democratic Republic of the Congo from visiting Goma in order to assist the disaster-stricken and endangered population constitutes a flagrant violation of the duty of the Congolese Government to protect and provide humanitarian assistance to its population, represents a threat to human life and an infringement of human dignity, and also constitutes a crime against humanity.

The duty to provide humanitarian assistance is such an imperative that international law today recognizes that it applies even to the territory of foreign States. It was thus from this perspective that the Security Council adopted resolution 688 (1991) concerning aid to the Kurdish civilian population in Iraq and demanded that "Iraq cooperate with the Secretary-General to these ends" and "allow immediate access by international humanitarian organizations to all those in need of assistance". Humanitarian intervention is recognized today under certain conditions.

III. Other bases for the duty of the Congolese State to provide humanitarian assistance

In addition to the Lusaka Ceasefire Agreement of 10 July 1999 and the Republican Pact concluded in Gaborone on 25 August 2001, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, also provides a basis for the duty to provide humanitarian assistance, which the Government of the Democratic Republic of the Congo intends to assume.

1. *Lusaka Agreement of 10 July 1999*

The behaviour of Rwanda (and RCD), which was also a signatory of the Lusaka Agreement, is in flagrant contravention of article 3, paragraphs 6, 10 and 15, of the Agreement, which respectively stipulate:

> "The ceasefire shall guarantee the free movement of persons and goods throughout the national territory of the Democratic Republic of the Congo."
>
> "The Parties shall facilitate humanitarian assistance through the opening up of humanitarian corridors and creation of conditions conducive to the provision of urgent humanitarian assistance to displaced persons, refugees and other affected persons."
>
> "Nothing in this Agreement shall in any way undermine the sovereignty and territorial integrity of the Democratic Republic of the Congo."

2. *The Republican Pact concluded in Gaborone on 25 August 2001*

The participants in the inter-Congolese political negotiations (including RCD), undertook the commitment in particular "to guarantee the free movement of persons and goods".

Nevertheless, in its communiqué of 20 January 2002, RCD/Goma (the rebel movement supported by Rwanda), a signatory of the Republican Pact, stated that it was opposed to the sending of the emergency governmental mission to Goma.

This attitude on the part of RCD is aimed only at aggravating the inhumane treatment to which the Rwandese occupation forces have continued to subject the population since the beginning of the war of aggression in 1998.

3. *Geneva Convention relative to the Protection of Civilian Persons in Time of War*

Article 23 of this Convention provides that "Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases".

IV. Conclusions

In view of the foregoing, the Government of the Democratic Republic of the Congo urgently requests the Security Council to demand that Rwanda and RCD/Goma:

1. Facilitate the organization and coordination of the provision of humanitarian assistance to the disaster-stricken population of Goma and its surrounding area by the Government of the Democratic Republic of the Congo;

2. Facilitate all humanitarian operations and actions on the part of international humanitarian organizations, non-governmental organizations and all States to which the Government of the Democratic Republic of the Congo has appealed, by permitting immediate access to all those who are in need of assistance;

3. Open humanitarian corridors for facilitating the provision of aid to the disaster-stricken persons;

4. Use "all necessary means" to re-establish the recognized rights of the Congolese State and its disaster-stricken population in Goma and the surrounding area, in accordance with Chapter VII of the Charter of the United Nations.